

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

CASEY JEAN PENN
TX-1336283-R

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DOCKETED COMPLAINT NO.
13-153

AGREED FINAL ORDER

On the 10 day of Aug, 2013, the Texas Appraiser Licensing and Certification Board, (the "Board"), considered the matter of the certification of Casey Jean Penn (the "Respondent").

In order to conclude this matter, Casey Jean Penn neither admits nor denies the truth of the Findings of Fact and Conclusions of Law contained herein and further agrees to the disciplinary action set out in this Agreed Final Order (the "Order"). The Board makes the following findings of fact and conclusions of law and enters this Order in accordance with TEX. OCC. CODE § 1103.458:

FINDINGS OF FACT

1. Respondent is a Texas state certified residential real estate appraiser who holds certification number, TX-1336283-R, and was certified by the Board during all times material to the above-noted complaints.
2. Respondent appraised real property located at: 4906 Fairway Place Court, Granbury, TX 76049 (the "property"), on or about February 11, 2013;
3. Thereafter, Joe Payne (the property owner) filed a complaint with the Board. The Board reviewed the complaint to ensure compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), TEX. OCC. CODE CHPT. 1103 (the "Act") and 22 TEX. ADMIN. CODE CHPT. 153 and 155 (the "Rules").
4. Thereafter the Board, in accordance with the mandate of the Administrative Procedure Act (the "APA"), TEX. GOV'T CODE ANN. CHPT. 2001, and TEX. OCC. CODE CHPT. 1103 (the "Act"), notified Respondent of the nature of the accusations involved and Respondent was afforded an opportunity to respond to the accusations in the complaint. Respondent was also requested to provide certain documentation to the Board.
5. Respondent violated TEX. OCC. CODE § 1103.405, 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a) by the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal reports for the property:
 - a) USPAP Ethics Rule -- Respondent committed numerous mistakes/omissions that affected the credibility of the appraisal/appraisal report;

- b) USPAP Record Keeping Rule – Respondent's appraisal report/workfile did not provide documentation/support of site value, selection/verification of comparables, basis for adjustments, cost new, accrued depreciation, effective age or remaining economic life;
- c) USPAP Scope of Work Rule -- Respondent's scope of work was inadequate in order to produce credible results;
- d) USPAP Standards 1-2(f), 2-1(c) & 2-2(x) – Respondent failed to identify extraordinary assumptions;
- e) USPAP Standards 1-2(e)(i) and 2-2(b)(iii) – Respondent failed to identify and report the site description adequately;
- f) USPAP Standards 1-4(f) and 2-2(b)(viii) – Respondent inaccurately reported improvements on the subject property;
- g) USPAP Standards 1-2(e)(iv) and 2-2(b)(viii) – Respondent failed to identify, analyze or disclose impact [if any] of deed restrictions or homeowners association's requirements related to subject property;
- h) USPAP Standards 1-3(a) and 2-2(b)(viii); 1-1(b) – Respondent did not analyze/document/disclose effect of land use regulations even though, given the nature of the subject property, these regulations/restrictions would have an impact on credibility of value opinion;
- i) USPAP Standards 1-3(b) and 2-2(b)(ix) – Respondent did not provide support of opinion of highest and best use;
- j) USPAP Standards 1-4(b)(i) & 2-2(b)(viii); 1-1(a) & 1-4(b) – Respondent failed to use an appropriate method or technique to develop a site value determination;
- k) USPAP Standards 1-4(b)(ii) & 2-2(b)(viii); 1-1(a) & 1-4(b) – Respondent failed to use an appropriate method or technique to determine the cost new of improvements and failed to collect, verify, analyze and reconcile the cost new of improvements;
- l) USPAP Standards 1-4(b)(iii) & 2-2(b)(viii); 1-1(a) & 1-4(b) – Respondent failed to use an appropriate method or technique to determine accrued depreciations and failed to collect, verify, analyze and reconcile the accrued depreciations;
- m) USPAP Standards 1-4(a) and 2-2(b)(viii); 1-1(a) and 1-4(a) – Respondent has failed to collect, verify, analyze and reconcile comparable sales data adequately and has not employed recognized methods and techniques in her sales comparison approach. Respondent has not provided supporting documentation nor her reasoning and a summary of her analysis of the sales comparison approach. Respondent did not support, in either the appraisal report or the workfile, her basis for adjustments/non-adjustments;

- n) USPAP Standards 1-5(a) and 2-2(b)(viii); 1-1(b); 1-6(a), 1-6(b) and 2-2(b)(viii) – Respondent failed to disclose, analyze and reconcile significant and material information regarding the property's current listing;
 - o) USPAP Standards 1-5(b) and 2-2(b)(viii); 1-6(a), 1-6(b) and 2-2(b)(viii) – Respondent failed to analyze and reconcile this significant and material information within the 3 years prior to the effect date of each of the appraisal report Respondent prepared for the property; and
 - p) USPAP Standards 1-1(a), 1-1(b), 1-1(c), 2-1(a) and 2-1(b) – For the reasons detailed above, Respondent produced a misleading appraisal report for the property that contained several substantial errors of omission or commission by not employing correct methods and techniques. This resulted in an appraisal report that was not credible.
6. Respondent made omissions of material fact with respect to her appraisal of the property as detailed above.
7. The parties enter into this consent order in accordance with TEX. OCC. CODE § 1103.458.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE § 1103.
2. Respondent violated the above-noted provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 155.1(a) and 153.20(a)(3).
3. Respondent violated 22 TEX. ADMIN. CODE § 153.20(9) by making omissions of material fact.
4. The parties are authorized to resolve their dispute by means of a consent order in accordance with TEX. OCC. CODE § 1103.458.

ORDER

Based on the above findings of fact and conclusions of law, the Board **ORDERS** that Respondent's Texas state certification (TX-1326295-R) is hereby suspended for twelve (12) months, beginning on Friday, August 16th, 2013, with this suspension being fully probated under the following terms and conditions:

1. **EDUCATION.** On or before August 16, 2014. Respondent shall submit documentation of attendance and successful completion of the classes set out below to the Board. All classes required by this Order must be classes approved by the Board. Unless otherwise noted below, all classes must require in-class attendance. If the class requires an exam, Respondent must receive a passing grade on the exam. None of the required class hours will count toward

Respondent's continuing education requirements for licensure. **Respondent is solely responsible for locating and scheduling classes to timely satisfy this Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion of the course in the event of course cancellation or rescheduling by the course provider.**

- a. A classroom course in USPAP, a minimum of fifteen (15) class hours, on or before August 16, 2014.
 - b. A classroom course on the sales comparison approach, a minimum of eight (8) class hours, on or before August 16, 2014
2. **MENTORSHIP.** On or before August 16, 2014. Respondent shall complete four (4) hours of in-person mentorship conducted by a certified USPAP instructor approved by the Board in accordance with the schedule and topics set out below. Respondent shall submit a certification of completion signed by the approved certified USPAP instructor and a signed copy of the Guidelines for Texas Appraiser Licensing and Certification Board Mentors and Mentees on or before the due date listed for each mentorship requirement. **Respondent is solely responsible for locating and scheduling an approved mentor to timely satisfy this Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion.**
- a. Four (4) hours of mentorship, on or before August 16, 2014.
 - i. Two (2) hours regarding the sales comparison approach.
 - ii. One (1) hour regarding the cost approach.
 - iii. One (1) hour regarding report writing.
3. **ADMINISTRATIVE PENALTY.** On or before September 5, 2013. Pay to the Board an administrative penalty of one thousand dollars (\$1,000.00), by certified funds, within twenty (20) days of the effective date of this order (i.e. on or before September 5, 2013).
4. Respondent shall fully and timely comply with all of the provisions of this Agreed Final Order; and
5. Respondent shall comply with all provisions of the Act, the Rules of the Board, and USPAP in the future or be subjected to further disciplinary action.

IF RESPONDENT FAILS TO TIMELY COMPLY WITH ANY TERM IN THIS AGREED FINAL ORDER, WHICH HAS A SPECIFIC, STATED DUE DATE, RESPONDENT SHALL BE ASSESSED A \$1,000 ADMINISTRATIVE PENALTY AND RESPONDENT'S LICENSE, CERTIFICATION, AUTHORIZATION OR REGISTRATION SHALL BE SUSPENDED FOR THE FULL TERM OF THE PROBATION.

ANY SUCH SUSPENSION SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT OR THE ADMINISTRATIVE PROCEDURE ACT, AND RESPONDENT SPECIFICALLY WAIVES ANY SUCH HEARING OR DUE PROCESS.

RESPONDENT, BY SIGNING THIS AGREED FINAL ORDER, WAIVES THE RESPONDENT'S RIGHT TO A FORMAL HEARING, ANY MOTION FOR REHEARING, AND ANY RIGHT TO SEEK JUDICIAL REVIEW OF THIS AGREED FINAL ORDER.

Information about this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published on the Board's website.

Respondent is solely responsible for timely delivery to the board of all documents and payments necessary for compliance of this agreed final order. Payment of any administrative penalties due must be in the form of a cashier's check or money order made payable to the Texas Appraiser Licensing and Certification Board. Respondent shall retain documentation (reply email, fax confirmation, return receipt, etc.) confirming receipt by the board of all the necessary documents.

Respondent shall send all documents and payments necessary for compliance by: (1) email to compliance.talcb@talcb.texas.gov, (2) fax to (512) 936-3966, attn: Compliance, or (3) certified mail return receipt requested to Standards & Enforcement Services, Texas Appraiser Licensing & Certification Board, Stephen F. Austin Building, 1700 N. Congress Ave., Suite 400, Austin, TX 78701.

I HAVE READ AND REVIEWED THIS ENTIRE AGREED FINAL ORDER FULLY AND AM ENTERING INTO IT OF MY OWN FREE WILL TO AVOID THE EXPENSE OF LITIGATION AND TO REACH AN EXPEDITIOUS RESOLUTION OF THE MATTER. I NEITHER ADMIT NOR DENY THAT THE FINDINGS OF FACT AND CONCLUSIONS OF LAW CONTAINED HEREIN ARE CORRECT. I UNDERSTAND ALL OF MY COMPLIANCE OBLIGATIONS UNDER THIS AGREED FINAL ORDER AND THE CONSEQUENCES FOR FAILING TO COMPLY WITH THOSE OBLIGATIONS.

I UNDERSTAND THAT THE BOARD AND ITS STAFF CANNOT PROVIDE ME WITH LEGAL ADVICE. I AM AWARE OF MY RIGHT TO A HEARING, AND HEREBY WAIVE A HEARING AND ALSO WAIVE ANY RIGHT TO SEEK JUDICIAL REVIEW OF THIS AGREED FINAL ORDER, INCLUDING FOR ANY SUBSEQUENT ACTION RESULTING FROM MY FAILURE TO TIMELY COMPLY WITH AN ADMINISTRATIVE REQUIREMENT OF THIS AGREED FINAL ORDER, SUCH AS PAYMENT OF A FEE, COMPLETION OF COURSEWORK OR FAILURE TO PROVIDE LOGS.

This agreement may be executed in one or more counterparts, in form of electronic mail, facsimile, or other written expression of agreement, each of which shall be deemed an original and together shall comprise evidence of full execution of the agreement.

THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been

delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

Signed this 2nd day of August, 2013.

Casey Jean Penn
CASEY JEAN PENN

Ted Whitmer
TED WHITMER, ATTORNEY FOR
CASEY JEAN PENN

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this 2nd day of August, 2013, by CASEY JEAN PENN, to certify which, witness my hand and official seal.

Sharon Kimsey
Notary Public Signature

Sharon Kimsey
Notary Public's Printed Name



Signed by the Standards and Enforcement Services Division this 2nd day of August, 2013.

Kyle Wolfe
Kyle Wolfe, TALCB Staff Attorney

Signed by the Commissioner this 16 day of Aug, 2013.

Douglas Oldmixon
Douglas Oldmixon, Commissioner
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 16 day of Aug, 2013.

Walker Beard
Walker Beard, Chairperson
Texas Appraiser Licensing and Certification Board